

DEATH IN CUSTODY REPORTING ACT OF 2007

JANUARY 18, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 3971]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3971) to encourage States to report to the Attorney General certain information regarding the deaths of individuals in the custody of law enforcement agencies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Death in Custody Reporting Act of 2007”.

**SEC. 2. INFORMATION REGARDING INDIVIDUALS WHO DIE IN THE CUSTODY OF LAW ENFORCEMENT.**

(a) **IN GENERAL.**—For each fiscal year after the expiration of the period specified in subsection (b)(1) in which a State receives funds for a program referred to in subsection (b)(2), the State shall report to the Attorney General, on a quarterly basis and pursuant to guidelines established by the Attorney General, information regarding the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp, boot camp that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including any juvenile facility) that, at a minimum, includes—

- (1) the name, gender, race, ethnicity, and age of the deceased;
- (2) the date, time, and location of death;
- (3) the law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and
- (4) a brief description of the circumstances surrounding the death.

(b) **COMPLIANCE AND INELIGIBILITY.**—

(1) **COMPLIANCE DATE.**—Each State shall have not more than 30 days from the date of enactment of this Act to comply with subsection (a), except that—

(A) the Attorney General may grant an additional 30 days to a State that is making good faith efforts to comply with such subsection; and

(B) the Attorney General shall waive the requirements of subsection (a) if compliance with such subsection by a State would be unconstitutional under the constitution of such State.

(2) **INELIGIBILITY FOR FUNDS.**—For any fiscal year after the expiration of the period specified in paragraph (1), a State that fails to comply with subsection

(a) shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the State under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Local Government Law Enforcement Block Grants Program, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(c) **REALLOCATION.**—Amounts not allocated under a program referred to in subsection (b)(2) to a State for failure to fully comply with subsection (a) shall be reallocated under that program to States that have not failed to comply with such subsection.

(d) **DEFINITION.**—In this section, the term “State” has the same meaning given that term in section 901 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3791).

**SEC. 3. STUDY OF INFORMATION RELATING TO DEATHS IN CUSTODY.**

(a) **STUDY REQUIRED.**—The Attorney General shall, subject to the availability of appropriations under subsection (d), through grant or contract, provide for a study of the information reported under section 2 (regarding the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp, boot camp that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including any juvenile facility)) to—

(1) determine means by which such information can be used to reduce the number of such deaths; and

(2) examine the relationship, if any, between the number of such deaths and the actions of management of such jails, prisons, and other correctional facilities relating to such deaths.

(b) **REPORT.**—Not later than 2 years after the date of the enactment of this Act, the Attorney General shall prepare and submit to Congress a report that contains the findings of the study required by subsection (a).

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$500,000 for fiscal year 2009. Funds appropriated under this subsection shall remain available until expended.

**PURPOSE AND SUMMARY**

The purpose of H.R. 3971, the “Death in Custody Reporting Act of 2007,” is to lower prisoner mortality rates by promoting greater safety. To this end, the bill requires States that receive certain criminal justice assistance grants to report on a quarterly basis to

the Attorney General specified information regarding the death of any person who is under arrest, in the process of being arrested, en route to incarceration after arrest, or incarcerated in State or local facilities. H.R. 3971 also requires the Attorney General to study and report to Congress on deaths of persons in custody. The report must identify best practices for optimizing prisoner safety and lowering prisoner mortality rates.

#### BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 3971 reauthorizes the Death in Custody Reporting Act of 2000, which expired in December 2006.<sup>1</sup> Prior to the enactment of the Death in Custody Reporting Act of 2000, States had no uniform requirements for reporting the circumstances surrounding the death of persons held in custody. The lack of uniform reporting requirements made it impossible to ascertain the number of prisoner deaths resulting from suicide, homicide, or natural causes, which in turn made oversight of prisoner treatment inadequate at the very least. Consequently, an environment of suspicion arose surrounding the approximately 1,000 deaths that were believed to have occurred in jails and prisons each year, which prompted researcher and activist scrutiny of jail and prison conditions from the 1960's to the 1980's. For example, one study examining the death rate in jails and prisons published in 1988 found very little reporting of the circumstances surrounding prisoners' deaths.<sup>2</sup> In fact, by 1986, only 25 States and the District of Columbia had jail inspection units.<sup>3</sup> Moreover, States that did report deaths generally differed on basic reporting standards. For example, jurisdictions differed on the definition of "custody," which made it difficult to determine whether a prisoner died during arrest, while in jail before trial, or post-conviction.<sup>4</sup> The insufficient data and lack of uniformity of the data collected served to make oversight of prisoner safety highly problematic.

Nevertheless, the 1988 study highlighted the potential value that oversight presented with respect to improving conditions. It noted that in the 1970's, when there was little or no focus on deaths in custody, it was unusual for a jail to be sued for negligence when a prisoner died in custody.<sup>5</sup> By the 1980's, however, it was unusual for a jail not to be sued under those circumstances,<sup>6</sup> as increased interest in oversight shed light on conditions in State and local jails and helped provide support for wrongful death suits. The increasing litigation forced some measure of accountability, and conditions somewhat improved. Moreover, activism and news of the litigation spurred media interest, which shed further light on conditions and prompted Congressional action.

Legislation addressing this problem was introduced by Representatives Bobby Scott (D-VA) and Asa Hutchinson (R-AK) in several Congresses. Finally, the Death in Custody Reporting Act of 2000 was enacted, which required States receiving grants to comply with reporting requirements established by the Attorney Gen-

<sup>1</sup>Pub. L. No. 106-297, 114 Stat. 1045 (2000).

<sup>2</sup>Lisa M. Hayes & Joseph R. Rowan, *National Study of Jail Suicides: Seven Years Later*, The National Center on Institutions and Alternatives (Feb. 1988).

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

eral. Since the enactment of this Act, the Bureau of Justice Statistics (BJS) has compiled statistics detailing not only the circumstances of prisoner deaths, but the rates of deaths in prisons and jails, as well as the rates broken out by size of the various facilities.

With the detailed statistical data, policy makers, both State and Federal, can make informed policy judgments about the treatment of prisoners leading to great success in lowering the prisoner death rate. In fact, since the focus on deaths in custody emerged in the mid-1980's, the latest BJS report, dated August 2005, shows a 64% decline in suicides and a 93% decline in the homicide rate.<sup>7</sup>

These results underscore the benefits of continuing to collect these statistics, which will be accomplished by the enactment of H.R. 3971.

#### HEARINGS

The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on July 24, 2007. Testimony was received from Charles Sullivan, Director of National CURE; Jeffrey Sedgwick, Director of the U.S. Department of Justice Bureau of Justice Statistics; Jenni Gainsborough, Director of the Washington Office of Penal Reform International; and Mary Scott, surviving mother of Jonathan Magbie, who died while in the custody of the District of Columbia Jail on September 20, 2004.

#### COMMITTEE CONSIDERATION

On November 1, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered the bill H.R. 3971 favorably reported by voice vote without amendment, a quorum being present. On November 7, 2007, the Committee met in open session and ordered the bill H.R. 3971 favorably reported with an amendment by voice vote, a quorum being present.

#### COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 3971.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

<sup>7</sup> Christopher Mumola, Suicide and Homicide in State Prisons and Local Jails, U.S. Department of Justice Office of Justice Programs—Bureau of Justice Statistics Special Report (Aug. 2005).

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3971, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 14, 2008.*

Hon. JOHN CONYERS, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3971, the Death in Custody Reporting Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,  
*Director.*

Enclosure

cc: Honorable Lamar S. Smith.  
Ranking Member

*H.R. 3971—Death in Custody Reporting Act of 2007.*

H.R. 3971 would authorize the appropriation of \$500,000 in fiscal year 2009 for the Department of Justice to conduct a study on deaths that occur while individuals are in the custody of state or local law enforcement agencies. CBO estimates that implementing the bill would cost \$500,000 over the 2009–2010 period. Enacting H.R. 3971 would not affect direct spending or revenues.

H.R. 3971 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Keith Fontenot, Deputy Assistant Director for Health and Human Resources, Budget Analysis Division.

## PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3971 will help promote prison safety and lower prison and jail mortality rates.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8 of the Constitution.

## ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1943 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

## SECTION-BY-SECTION ANALYSIS

*Sec. 1. Short title.* Section 1 sets forth the short title of the bill as the “Death in Custody Reporting Act of 2007.”

*Sec. 2. Information Regarding Individuals Who Die in the Custody of Law Enforcement.* Section 2 requires a State that receives certain funding to report on a quarterly basis to the Attorney General information regarding the death of any person who is detained, under arrest, or in the process of being arrested, en route to be incarcerated, or incarcerated at a municipal or county jail, State prison, State-run boot camp, and certain other correctional facilities. It also details the information that must be included in the report. Should a State fail to comply with this requirement, section 2 mandates that such State shall not receive 10 percent of the funds that would otherwise be allocated for the fiscal year to the State under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968,<sup>8</sup> whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Local Government Law Enforcement Block Grants Program, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise. These funds are to be reallocated to States that have complied with section 2.

*Sec. 3. Study of Information Relating to Deaths in Custody.* Section 3 requires the Attorney General to study and report to Congress on deaths of persons in custody and authorizes \$500,000 for the study.




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<sup>8</sup> 42 U.S.C. §§ 3750 *et seq.*